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which makes the present memoir both a complement and a corrective to Morley's *Life of Gladstone*. The two should be read side by side and the two points of view taken into account, in order to arrive at a fair comprehension of the course of English politics from 1855 to the end of the nineteenth century. Mr. Alfred E. Gathorne Hardy has edited his father's papers with care and discretion. The book would have been easier reading, had Mr. Gathorne Hardy used the third instead of the first person, in his connecting paragraphs. The diaries and letters were of course written in the first person, and the intrusion of a second individuality making use of the same form occasionally causes some needless confusion.

A. G. PORRITT.

The People's Law or Popular Participation in Law-making, from ancient Folk-moot to modern Referendum. A Study in the Evolution of Democracy and Direct Legislation. By CHARLES SUMNER LOBINGIER. (New York: The Macmillan Company, 1909. Pp. xxi, 429.)

The title of this work is somewhat misleading. It is not a complete history of popular legislation but mainly an account of popular participation in constitution-making in the United States. Judge Lobingier, it is true, devotes some attention to popular government before the American Revolution, and one part of his work is entitled, "Popular Participation in Law-making outside of the United States," but his account of the referendum in other countries is practically valueless, and the same statement may perhaps be made with reference to the discussion of early forms of popular participation in government. The Swiss referendum is excluded from treatment.

After a brief and unsatisfactory discussion of primitive popular assemblies and of folk-moots and craft guilds, Judge Lobingier discusses the democratizing influence of Calvinism and of the church covenants, and devotes a chapter to the popular movements in the British Islands before and during the Puritan period. He then discusses somewhat fully popular government in colonial America. The discussion here is perhaps the most unsatisfactory in the book. The author follows the development of popular government in the Colonies in so far as it has to deal with the English Puritan in New England and with the Scotch Presbyterian in the Southern colonies (p. 67). Puritanism and Cal-

vinism are the two fundamental causes of democratic government in England and America, according to Judge Lobingier, and this somewhat fanciful view is carried to extremes (p. 41). Where he knows of democratic movements, such movements must necessarily be due to a Puritan or a Scotch Presbyterian, and the author either ignores or does not know of movements which he might find it difficult to explain in this way. The discussion here is thoroughly uncritical, and the interpretation erroneous. Judge Lobingier does not get far away from the position taken by many uncritical writers, that the whole system of popular government in the United States originated in New England and somehow permeated the rest of the country. In the book under review what of democratic government cannot be attributed to New England finds a ready and easy explanation in Calvinism. The influence of New England and of the town meeting must be given its full weight, as must also the democratic influence of Calvinism, but the whole development of this country cannot be explained by these influences. Something must be attributed to the common English race and traditions of popular government; something to the English forms of popular local government in towns, vestries, and manor courts, with which the earlier settlers in America were familiar; something to the character of the country to which the settlers came; these are perhaps the most important influences in developing popular government in the American colonies, yet they are almost entirely ignored by Judge Lobingier. A thorough knowledge of the local organizations in the colonies during the years 1774-1776 would perhaps have shown the author that popular institutions were not confined to any particular sections and could not be explained by any one set of causes such as he employs.

When he reaches the period of early constitution-making in 1776 the author is on firmer ground, and his study of popular participation in constitution-making is the most satisfactory, as it is the longest portion of his book. Here, however, Judge Lobingier suffers from the attempt to apply the views laid down in the earlier portion of his work. He fails to appreciate the influence of the theory of the social contract and of the distinction between constitutions and statutes as leading to the development of a method of framing constitutions different from that for enacting statutes.

In his treatment of constitution-making in the states the author's work is, in the main, accurate, though there seems hardly to be much reason for his manner of grouping the states, and the inclusion of states within the grouping is sometimes actually wrong. There are some errors,

and there is sometimes failure to use accessible information. The account of constitution-making during the revolutionary period often suffers from a failure to use all material, and some of the statements, are actually erroneous on this account. New Hampshire did not get the idea of an independent convention from Massachusetts; neither can be said to have obtained it from the other, but an independent convention was first suggested and employed in New Hampshire. The Alabama (1819) plan of constitutional alteration was probably an adaptation of that first employed in the Maryland constitution of 1776, of which the author seemingly does not know (p. 214). If so much emphasis were to be laid upon the cases where there has been a failure to obtain popular ratification of constitutions in recent years, a fuller reference should have been made to the action of the Kentucky convention of 1891. The chapter on the law relating to popular ratification is fragmentary and highly unsatisfactory.

As has been suggested, Judge Lobingier's work is not a comprehensive history of popular legislation. Even as a history of constitution-making in the United States it is not well-proportioned. It is marred by fanciful theories, and though Judge Lobingier's facts are interesting and have been gathered in many cases with great industry and thoroughness, his interpretation of the facts is often misleading. The work is mainly historical in character, and is animated throughout by a somewhat uncritical enthusiasm for popular legislation. There is practically no critical discussion of the uses and limitations of the referendum, or of the extent to which it has actually been employed. The value of the study lies in its account of constitution-making and revision, but practically nothing of a critical discussion of the working of the constitutional referendum appears. There is no account in the book of the development of the municipal referendum in the United States in recent years, and only a bare statement regarding the recent development of the referendum upon state statutes. Judge Lobingier has gathered much information which will be of value to later students, and his principal service is in having gathered such material not in the use to which he has put it, although his work will be of much service as presenting a résumé of the subject.

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